

Complainants who have been fired should continue to look for work and record each contact with an employer by noting the:

- ◆ Company's name and address
- ◆ Position sought and date of application
- ◆ The name of the company representative

The Department should be notified in writing if complainants:

- ◇ Decide to withdraw the complaint.
- ◇ Decide to file a lawsuit on their own behalf.
- ◇ Change their address or telephone number.
- ◇ Cannot be reached as previously indicated.

If complainants fail to respond to the Department's contacts, their cases may be closed.

The law prohibits respondents from retaliating against complainants or any person who provides information to the Department. If retaliation occurs, the Department should be contacted immediately.

Service

After a complaint is filed, a copy is served on the party who is alleged to have violated the law. The complaint may also be referred to a federal agency with concurrent jurisdiction.

Settlement

A case may be settled at any time after the complaint is filed. Settlement can occur in several ways. For example, the respondent may contact the Department with an offer or may approach the complainant directly. If this occurs, the complainant should contact the Department for assistance. Settlements may also result from negotiations initiated by the Department.

The Department will discuss all settlement offers with the complainant, who is free to accept or reject them. The Department will determine appropriate settlement terms for any agreement it signs.

After the parties reach agreement on settlement terms, the terms are put in writing for signature by the complainant, the respondent and the Department. A settlement signed by the Department is enforceable in a court of law.

Investigation

If the complaint is not resolved during the preliminary stages, it will be fully investigated. If complainants wish to add new information to their file, it should be submitted in writing and identified by complaint number.

As the investigation proceeds, a Department staff member may need to:

- ◇ Interview the party against whom the complaint is filed, as well as other witnesses.
- ◇ Have access to pertinent records and documents.
- ◇ Make an on-site inspection of facilities and operations.
- ◇ Issue subpoenas or require that witnesses be deposed.

Conciliation

If the complaint is substantiated, a formal conciliation conference may be scheduled with Department staff. Corrective measures to resolve the complaint may require:

- ◇ The previously denied employment or service be made available.
- ◇ Compensation for any losses incurred because of the discrimination.
- ◇ Compensation for the victim's emotional distress.
- ◇ Correction of other harm(s) resulting from the violation(s).
- ◇ Modification of practices that adversely affect persons protected under the law.
- ◇ Other actions to eliminate the effects of discrimination.

The terms of any corrective measure will be formalized in a written agreement. The agreement will become part of the public record unless the parties, including the Department, agree that it will be held confidential.

Prosecution

If the Department determines that the law has been violated and is unable to resolve the complaint through conciliation, the Director may issue an accusation of discrimination. The accusation must be issued within one year of the date a complaint is filed. If the Department seeks emotional distress damages, administrative fines, or civil penalties, the respondent may elect to either have the matter heard by the Fair Employment and Housing Commission or transfer the matter to court.

◆ *Fair Employment and Housing Commission*

If the respondent elects to have the matter heard by the Commission, the Commission will hear testimony under oath, render a decision and issue a legally enforceable order. The order may include out-of-pocket losses, hiring or reinstatement, changes in a respondent's policies or practices, additional damages for emotional distress and administrative fines, not to exceed \$150,000 per complainant per respondent.

In cases where hate violence is substantiated in violation of *Civil Code section 51.7 (Ralph Civil Rights Act)*, the Commission may order remedies for out-of-pocket losses and emotional distress damages not to exceed \$150,000, as well as a civil penalty not to exceed \$25,000 which would be awarded to the complainant.

The Commission's order may be appealed to or enforced by a Superior Court.

◆ *Court*

If the respondent elects to have the matter transferred to court, the Department will file a lawsuit on behalf of the complainant, naming the complainant as Real Party in Interest. Damages in court are unlimited.

Right to Sue

Complainants have the right to file a lawsuit on their own behalf in a California court.

If a complainant filing an employment discrimination complaint chooses to file a lawsuit under the *Fair Employment and Housing Act*, the Department will cease its investigation and close the case. If a complaint has not been resolved within 150 days of filing, the Department will advise the complaining party that he/she may request a Notice of Right to Sue.

Individuals who file lawsuits on their own behalf under the *Fair Employment and Housing Act* need to provide the court with a Notice of Right to Sue from the Department. The lawsuit must be filed within one year from the date of the Notice of Right to Sue. A Notice of Right to Sue may be requested at any time during the investigation by the complainant.

If not requested earlier, a Notice of Right to Sue will be automatically issued when the complaint is closed or one year from the date the complaint is filed.

Individuals who wish to file a lawsuit under the *Ralph or Unruh Civil Rights Acts* are not required to file with the Department and do not need a Notice of Right to Sue.



State of California
Department of Fair Employment & Housing
2014 T Street, Suite 210
Sacramento, CA 95814

A Guide For Complainants

The Department of Fair Employment and Housing investigates complaints of harassment and discrimination in employment, public accommodations and services. The law prohibits harassment and discrimination because of race, color, ancestry, religion, sex, disability (including HIV/AIDS diagnosis), national origin, sexual orientation, age (40 and over), marital status, medical condition (cancer and genetic characteristics), pregnancy and denial of medical, family care or pregnancy disability leave.

The Department also investigates complaints in which an individual claims he/she was the victim of violence or threats of violence because of race, color, religion, ancestry, age, disability, sex, sexual orientation, political affiliation or position in a labor dispute.

THE PROCESS

Complaint

People who believe they have experienced discrimination may file a complaint with the Department of Fair Employment and Housing. Complaints may be filed by an individual or by the Director of the Department of Fair Employment and Housing.

The person filing is the complainant. The employer or individual filed against is the respondent. The complaint is the written document that states what happened (complainant was fired, laid off, harassed, etc.) and why the complainant believes the action or incident was illegal.

It is essential that complainants cooperate fully with the Department. They should provide accurate information, such as names, addresses, telephone numbers, dates and places. They will be asked to identify witnesses and to supply documents (termination notices, etc.) to substantiate the charges listed in the complaint.

**For more information,
contact the Department
toll free at:
(800) 884-1684**

**Sacramento area & out-of-state
(916) 227-0551**

**TTY Number
(800) 700-2320**

**or visit our website at:
www.dfeh.ca.gov**